

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATEMENT OF POLICY**

**FOR  
PROPOSED DECISIONS FROM THE OFFICE OF ADMINISTRATIVE HEARINGS**

**February 15, 2011**

*This policy is effective March 1, 2011. This policy is intended to supplement any applicable provisions of state or federal law.*

**I. PURPOSE**

This Policy (Policy) sets forth the procedures under which the California Public Employees' Retirement System (CalPERS) shall present proposed decisions (Proposed Decisions) from the Office of Administrative Hearings (OAH) to the Board of Administration (Board).

The goal of this Policy is to ensure that the CalPERS review process for Proposed Decisions provides procedural fairness to all parties, avoids even the appearance of impropriety or improper influence, preserves neutrality for all Board decisions and provides a mechanism for the Board to obtain neutral legal advice when needed on substantive or procedural legal issues arising during the review of any Proposed Decision. The Board's existing written policy for procedures related to the review of Proposed Decisions dates back approximately 25 years. This Policy seeks also to update the old policy by incorporating all existing practices that have evolved since into one written policy.

**II. STRATEGIC OBJECTIVES**

The objectives of this Policy are to:

- A. Establish a Proposed Decision review process that ensures due process requirements are met and that avoids even the appearance of impropriety or improper influence.
- B. Establish the format and content for agenda items relating to Proposed Decisions presented for the Board's consideration.
- C. Establish a process to ensure the Board has access to neutral legal advice when considering substantive legal issues raised by Proposed Decisions.

**III. POLICY AND PROCEDURES**

**A. Applicability**

This Policy applies to all agenda items seeking Board consideration of any Proposed Decision.

## B. Procedure for Board Consideration of Proposed Decisions from the OAH

When disputes arise over the interpretation of the Public Employees' Retirement Law (PERL), the Public Employees' Medical and Hospital Act (PEMHCA), or other laws or programs administered by CalPERS, or over an individual's eligibility for CalPERS benefits, CalPERS utilizes an administrative hearing process to resolve these disputes. This process is conducted in accordance with the provisions of the Administrative Procedures Act<sup>1</sup> and the Board's procedural regulations.<sup>2</sup> Pursuant to these statutes and regulations, CalPERS refers such matters to the OAH for an administrative hearing. The administrative hearings are presided over by a neutral Administrative Law Judge (ALJ). After completing the evidentiary hearing process, the ALJ forwards his or her Proposed Decision to CalPERS for Board review.

After receiving a Proposed Decision, CalPERS staff will provide reasonable notice to all parties of the Proposed Decision prior to the Board's action on the decision. Copies of a Proposed Decision must be mailed to all parties to the proceeding no later than 30 days from receipt. At the time notice is provided to the other parties that the Proposed Decision has been calendared for action before the Board, CalPERS staff will include instructions on how other parties may submit written arguments for Board consideration. No oral arguments will be permitted at the time the Board considers a Proposed Decision.

Written arguments may not exceed 6 typed pages. The parties' written arguments must be received by CalPERS no later than 12 calendar days before the Board's meeting on the matter. CalPERS staff will not review the content of written arguments received from the other parties until after that content has been shared with the Board.

CalPERS staff will prepare and present an agenda item to the Board for each Proposed Decision to be considered. The Board will take action on Proposed Decisions during the course of its regularly scheduled meetings.

At its meeting, the Board will decide whether to adopt the Proposed Decision as its own, make technical or minor changes and adopt the Proposed Decision as its own,<sup>3</sup> reject the Proposed Decision and decide the matter itself from the record (i.e. a full Board hearing), or reject the decision and remand the matter back to the OAH for the taking of more evidence.

All agenda items presented to the Board will include four main components: a copy of the proposed decision, a brief factual procedural summary of the case, all arguments received from advocates representing all parties in the matter, and a

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<sup>1</sup> Gov. Code §§ 11500 et. seq.

<sup>2</sup> Cal. Code Regs., title 2, §§ 555.1-555.4.

<sup>3</sup> Technical or minor changes must be limited to clarifying or similar changes that do not affect the factual or legal basis of the decision. Gov. Code § 11517 (c)(2)(C).

description of the Board's alternatives relative to the Proposed Decision. Staff will no longer set forth a recommended action in agenda items.

All agenda items will be signed by the Assistant Executive Officer for the Division from which the case arose. The CalPERS staff attorney assigned to the matter will prepare and sign staff's argument, which will be included with the agenda item, and will be presented to the Board simultaneously with all other written arguments submitted by all other parties to the case.

All Proposed Decisions will be acted upon by the Board. The Board must take action on a Proposed Decision within 100 days of CalPERS receipt of a Proposed Decision. If the Board fails to take action within this time period, a Proposed Decision is deemed adopted by the Board.

C. Procedure for Retention of Outside Counsel to Advise the Board on Substantive Legal Issues Raised by Proposed Decisions.

The Board may consult with outside counsel when considering a Proposed Decision. Counsel will be available to provide neutral legal advice to the Board on substantive and procedural legal issues arising from Proposed Decisions and may be called upon to provide the Board with legal advice when the Board determines such advice is necessary to carry out its duties relative to taking action on a Proposed Decision.

The Board may request to adjourn into a closed session meeting to discuss the merits of a Proposed Decision or to discuss legal issues with outside counsel prior to taking action on any Proposed Decision.

All legal advice given by outside counsel will be provided at the meeting of the Board, in the presence of all Board members attending that meeting. Consistent with the CalPERS Statement of Governance Principles, any legal advice provided pursuant to this Policy to one Board member will be provided to all Board members and no individual Board member will contact outside counsel directly, either verbally or in writing, to seek advice or guidance relative to any Proposed Decision outside of a meeting of the Board.

Any legal advice rendered pursuant to this Policy shall be subject to all privileges and protections, including but not limited to the attorney client privilege and attorney work product doctrine, applicable under relevant law.

#### **IV. RESPONSIBILITIES**

- A. Except as otherwise specified within this Policy, CalPERS' Chief Executive Officer is responsible for implementing these policies and procedures. The Chief Executive Officer may delegate responsibilities to subordinate staff as may be necessary.

Dated: February 3, 2011